140-417

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 638.

QUOCK TING, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED OCTOBER 16, 1888.

SUPREME COURT OF THE UNITED STATES.

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No. 638.

QUOCK TING, APPELLANT,

vs.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print.
Petition for writ of *habeas corpus*	1	1
Order for " "	2	1
Writ of *habeas corpus*	3	2
Marshal's return	4	3
Writ of *habeas corpus*	4	3
Return to writ of *habeas corpus*	6	4
Judgment	7	4
Clerk's certificate to judgment roll	9	5
Report of testimony	10	5
Testimony of Quock Ting	11	6
Quock Ah Chee	13	7
Order allowing appeal	15	8
Bond	16	8
Clerk's certificate	18	10
Citation	19	10
Proof of service of citation	20	11

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 3, 1891.

1 In the Circuit Court of the United States, Northern District of California.

In the Matter of QUOCK TING on *Habeas Corpus*. No. —.

To the Hon. Ogden Hoffman, judge of the circuit court of the United States, northern district of California:

The petition of Quock Yan respectfully shows:

That Quock Ting is unlawfully imprisoned, detained, confined, and restrained of his liberty by Captain Bryan, agent of the steamship City of New York, in the city and county of San Francisco, State of California, northern district of California.

That the said imprisonment, detention, confinement, and restraint are illegal, and the illegality thereof consists in this, to wit:

That it is claimed by said Captain Bryan that said Quock Ting is a subject of the Emperor of China, and must and cannot be allowed to land under the provisions of the act of Congress of May 6th, 1882, entitled "An act to execute certain treaty stipulations relating to Chinese," and the act amendatory thereof and supplemental thereto.

That said Quock Ting does not come within the restrictions of said act, but, on the contrary, your petitioner alleges that said Quock Ting is a citizen of the United States of America, born in the said United States of America.

That deponent is informed and believes that said Quock Ting has been examined by the customs authorities and permission to land denied.

That your petitioner makes this petition on behalf of said Quock Ting.

Wherefore your petitioner prays that a writ of *habeas corpus* may be granted direct to the said Captain Bryan, agent of the said steamship, commanding him to have the body of said Quock Ting before your honor, at a time and place therein to be specified, to do and receive what shall then and there be considered by your honor concerning him, together with the time and cause of such detention and said writ, and that he may be restored to his liberty.

Dated on the 1st day of March, 1888.

QUOCK [Chinese Signature] YAN, *Petitioner.*

STATE OF CALIFORNIA,
City and County of San Francisco, Northern District of California, United States of America, } *ss:*

Quock Yan, being duly sworn, says that he is the petitioner above named, and that he has heard read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge.

QUOCK [Chinese Signature] YAN.

Sworn to before me this 1st day of March, 1888.
[SEAL.] JAMES L. KING,
Notary Public.

2 (Endorsed:) No. 6314. Circuit court of the United States, northern district of California. *In re* Quock Ting on *habeas corpus*. S. S. ticket No. —. Petition and order for writ, etc. Filed March 8, 1888. L. S. B. Sawyer, clerk, by —— ——, deputy clerk. —— ——, attorney for petitioner.

Let the writ issue as prayed for in the within petition, returnable on or before March 9th, 1888, 10 a. m., or in case the steamer on which said petitioner is detained has not cleared on that day, then as soon as practicable after clearance, but before the departure of the said steamer, and when the within named Quock Ting is produced let him be admitted to bail in the sum of $1,500.
SAWYER, *Judge.*

3 In the Circuit Court of the United States, Northern District of California.

In the Matter of QUOCK TING on *Habeas Corpus*.

The President of the United States of America to Captain Bryan, agent of the steamship City of New York, Greeting:

You are hereby commanded that you have the body of Quock Ting by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name he shall be called or charged, before the honorable the circuit court of the United States for the northern district of California, at the court-room of said court, in the city and county of San Francisco, California, on or before the 9th day of March, 1888, at 10 o'clock a. m., or in case the steamer on which said petitioner is detained has not cleared on that day, as soon as practicable after clearance, but before the departure of the steamer to do and receive what shall then and there be considered in the premises.

And have you then and there this writ.

Witness the Honorable Samuel F. Miller, senior associate justice of the Supreme Court of the United States this 8th day of March, A. D. 1888.
[SEAL.]
L. S. B. SAWYER, *Clerk.*
By —— ——,
Deputy Clerk.

4 (Endorsed:) No. 6314. Circuit court of the United States, northern district of California. In the matter of Quock Ting on *habeas corpus*. S. S. ticket No. —. Marshal's return of service of writ of *habeas corpus*. Filed on return this 9th day of March, 1888 L. S. B. Sawyer, clerk, by —— ——, deputy clerk.

I, L. S. B. Sawyer, clerk of the circuit court of the United States for the northern district of California, do hereby certify the foregoing to be a true copy of the writ of *habeas corpus* issued in the within entitled matter.

[SEAL.] Attest my hand and seal of said circuit court this 8th day of March, A. D. 1888.

L. S. B. SAWYER, *Clerk.*
By —— ——,
Deputy Clerk.

I hereby certify that on the 8 day of Mar., 1888, I received the writ of which the within is a copy, and that on the 8th day of Mar., 1888, at San Francisco, in this district, I personally served the said writ by delivering to and leaving the same with the agent of the steamship City of New York.

Dated San Francisco, Cal., Mar. 8, 1888.

J. C. FRANKS,
U. S. Marshal.
By JAMES R. DEAN,
Deputy Marshal.

5 In the Circuit Court of the United States, Northern District of California.

In the Matter of QUOCK TING on *Habeas Corpus.*

The President of the United States of America to Captain Bryan, agent of the steamship City of New York, Greeting:

You are hereby commanded that you have the body of Quock Ting by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention by whatsoever name he shall be called or charged, before the honorable the circuit court of the United States for the northern district of California, at the court-room of said court, in the city and county of San Francisco, California, on or before the 9th day of March, 1888, at 10 o'clock a. m., or in case the steamer on which said petitioner is detained has not cleared on that day, as soon as practicable after clearance, but before the departure of the Steamer to do and receive what shall then and there be considered in the premises.

And have you then and there this writ.

Witness the Honorable Samuel F. Miller, senior associate [SEAL.] justice of the Supreme Court of the United States this 8th day of March, A. D. 1888.

L. S. B. SAWYER, *Clerk.*
By —— ——,
Deputy Clerk.

6 (Endorsed:) No. 6314. Circuit court of the United States, Northern District of California. In the matter of Quock Ting on *habeas corpus.* S. S. ticket No. —. Writ of *habeas corpus* and

return thereto. Filed on return this 12th day of March, 1888. L. S. B. Sawyer, clerk, by —— ——, deputy clerk.

In obedience to the within writ, I hereby produce the body of Quock Ting as within directed, and return that I hold him in my custody, by direction of the customs authorities of the port of San Francisco, California, under the provisions of the Chinese restriction act.

A. CHESEBROUGH.
Agent Steamship "City of New York."

San Francisco, March 9th, 1888.

7 In the Circuit Court of the United States, Northern District of California.

In the Matter of QUOCK TING on *Habeas Corpus*. No. 6314.

This matter having been regularly brought on for hearing before the court and the judge thereof, the United States attorney having appeared and intervened on behalf of the United States, and the same having been duly heard and submitted and due consideration thereon had, it is by the court now here considered:

That Quock Ting, in whose behalf the writ of *habeas corpus* herein was sued out, was not at the date of the petition herein illegally restrained of his liberty as therein alleged.

It is further adjudged and found that he came from China by the steamship City of New York, and is a Chinese person forbidden by law to land within the United States, and has no right to be or remain therein.

It is therefore ordered that the said Quock Ting be remanded by the United States marshal for the northern district of California, to the custody whence he was taken, to wit, on board the said steamship to the custody of Captain Bryan, the agent of said steamship, or in case of a change of agent, to the custody of the agent thereof, whoever he may be at the time of this order of remand, or to place him in the hands and charge of any party on board said steamship for the time being representing the agent or then in charge of said steamship in the absence of the agent, or for the time being exercising control or authority thereon; this order to be executed as to the said steamship, whether still in port, not having departed therefrom or having departed and returned since the proceedings herein were instituted; and in case said steamship has departed and not returned, or for any other reason the said Quock Ting cannot be placed on said steamship; that the said marshal place him upon any other vessel available for the purpose, paying the necessary passage money, for the purpose of deporting him out of the United States and transporting him to the port whence he came; and for the purpose of carrying his order into effect, it is further ordered

that the said marshal take the said Quock Ting into custody and him safely keep till said order shall be fully executed.

Entered this 21st day of March, 1888.

L. S. B. SAWYER, *Clerk.*

8 [Endorsed:] No. 6314. United States circuit court for the northern district of California. *In re* Quock Ting on *habeas corpus.* Certified copy. Judgment of remand. Filed March 21st 1888. L. S. B. Sawyer, clerk, by —— ——, deputy clerk. Entered in judgment register No. 6, p. 272.

I, L. S. B. Sawyer, clerk of the circuit court of the United States, for the northern district of California, do hereby certify the foregoing to be a full, true, and correct copy of an original judgment of remand, entered in said court in the within entitled matter.

Attest my hand and seal of said circuit court this 21st day of March, A. D. 1888.

[SEAL.] L. S. B. SAWYER, *Clerk.*

By —— ——,

Deputy Clerk.

9 I, L. S. B. Sawyer, clerk of the circuit court of the United States for the ninth judicial circuit, northern district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment roll in the therein entitled matter.

[SEAL.] Attest my hand and the seal of said circuit court this 21st day of March, 1888.

L. S. B. SAWYER, *Clerk,*

By F. D. MONCKTON, *Deputy Clerk.*

(Endorsed:) Judgment roll. Filed March 21st, 1888. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

10 In the Circuit Court of the United States in and for the Northern District of California.

The Hon. E. M. Ross, judge.

In the Matter of the *Habeas Corpus* of QUOCK TING. No. 6314.

WEDNESDAY, *March* 21, 1888.

Index.

Quock Ting ---------- Page 2
Quock Ah Chee ---------- " 4

CLEMENT BENNETT,

U. S. Official Reporter, 434 *California Street, Room* 13.

11 In the Circuit Court of the United State in and for the Northern District of California.

The Hon. E. M. Ross, Judge.

In the Matter of the *Habeas Corpus* of QUOCK TING. No. 6314.

WEDNESDAY, *March* 21, 1888.

QUOCK TING, called for the petitioner, sworn.

Mr. STRAUS:

Q. What company do you belong to?
A. The Sam Yup Company.
Q. When did you return to China?
A. Kwong Sue 7th year, 10th, month, 2nd day, November 22, 1881.

Mr. WELLER:

Q. Where were you born?
A. In San Francisco.

Mr. STRAUS:

Q. Whereabouts in San Francisco?
A. Sun Chun Gee, on Dupont street, upstairs.
Q. What steamer did you go to China on?
A. The Rio de Janiero.
Q. Who, if any one, went to China with you?
12 A. My mother and myself.
Q. Did not some one else go back with you?
A. When we got on board of the ship, and after leaving, my mother got sea sick and three or four of the other passenger- attended to her.
Q. Do you recollect their names?
A. Chun Yun Chun and Quong Chew.
Q. Any more?
A. Quong Ying.

The COURT:

Q. How old were you then?
A. Ten years old.
Q. How old are you now?
A. I am 16 years old now.

Mr. STRAUS:

Q. How do you happen to recollect those names?
A. When I got to China my mother told me ver- often of those people and their names. She repeated them to me and I remember them.

The COURT:

Q. Six years ago?

A. My mother sometimes speaks those names to me very frequently.

Mr. STRAUS:

Q. Where is your father?
A. In San Francisco.
Q. What does your father do here?
A. He works on a sewing-machine.
Q. Have you seen him since you returned here last?
A. He is over there (pointing).

The COURT:

Q. Where is your mother?
A. In China.
Q. Mr. Vrooman, see if you can find any of those names?
The INTERPRETER: I find the three names here.

13 Mr. STRAUS:

Q. Where are those men now?
A. I do not know where they are. I do not know whether they came back to this country or not. They live in the next village to me, and are also friends of my father.

Mr. WELLER:

Q. Can you count in English?
A. I do not understand English.
Q. Can you count in English?
A. I can count in Chinese but not in English.
Q. Do you know the names of the days of the week in English?
A. I am too small, I did not learn it.
Q. You do not know anything at all in English?
A. No, sir; not a word.

QUOCK AH CHEE, called for the petitioner, sworn.

Mr. STRAUS:

Q. What is your business? What do you do here?
A. I work on a sewing-machine.
Q. Do you know this boy here (pointing to the petitioner)?
A. That is my boy.
Q. Where was he born?
A. 1030 Dupont street, upstairs, this city.
Q. When did he go to China?
A. Kwong Sue 7th year, 10th month, 2nd day.
Q. Who did he go with?
A. His mother and one of my friends, Chun Yun Chun.
Q. Why did she go back to China?
14 A. My mother and father are old, I want to send her back to attend to them.
Q. Why did you not go back with her?
A. I did not have enough money, so I send them back.

Q. Why is this boy coming back?

A. I want him to come back to learn English. I do not know whether I can get any work for him or not.

Q. Did you keep any book showing any account?

A. Yes, sir.

Q. Produce it and read it? Is that your own book, or the book of the firm?

A. It is the store-book (reading). Chun Yun Chun. Kwong Sue 7th year, 9th month, 25th day, purchase one pair of blankets $15, purchase ticket for him $51, purchase ticket for Quock Ting $38.25, purchase ticket for Ye Shee $51, insura. for them $225.

Q. Who is Yep Shee mentioned in that book?

A. That is my wife.

Q. This boy's mother?

A. Yes, sir.

Q. Mr. Vrooman, how does that date correspond with the date given by the boy?

The INTERPRETER: It is one day before the steamer sailed.

Mr. STRAUS: That is the case if your honor please.

The COURT: Let the petitioner be remanded.

Mr. STRAUS: I ask for five days' stay.

The COURT: Very well.

(Endorsed): Filed March 21, 1888. L. S. B. Sawyer, clerk. By F. D. Monckton, deputy clerk.

15 At a stated term, to wit, the February term, A. D. 1888, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, held at the court-room, in the city and county of San Francisco, on Saturday, the 24th day of March, in the year of our Lord one thousand eight hundred and eighty-eight.

Present: The Honorable E. M. Ross, U. S. district judge, southern district of California.

In the Matter of QUOCK TING on *Habeas Corpus*. No. 6314.

On motion of Gaston Straus, Esq., attorney for Quock Ting, it is ordered that an appeal to the Supreme Court of the United States, from the judgment entered herein, be and the same hereby is allowed, and that a certified transcript of the record and all proceedings herein be forthwith transmitted to the Supreme Court of the United States. It is further ordered that the amount of the bond to appear and for costs be and the same hereby is fixed at three thousand dollars.

16 UNITED STATES OF AMERICA, } ss:
Northern District of California, }

Be it remembered that on this 22nd day of March, 1888, before me, the undersigned, a commissioner duly appointed by the circuit court of the United States, northern district of California, to take acknowledgment of bail and affidavit, etc., personally appeared

Quock Ting, as principal, and Jack Tin, of the firm of Quan Lung Tai & Co., No. 1012 Dupont street, and Chan Cheung, of the firm of Quong Get Thung & Co., No. 610 Jackson street, as sureties, and acknowledged themselves to owe and be indebted to the United States of America as follows: That is to say, in the sum of three thousand dollars each, to be levied of their goods and chattels, lands, and tenements, and the United States rendered, if default be made, in the conditions following:

The conditions of this recognizance are such that whereas one Quock Ting has been produced before the circuit court of the United States in and for the northern district of California, upon a writ of *habeas corpus*, duly sued out of said court upon petition; and whereas the said Quock Ting has been duly admitted to bail by said court, pending the hearing of an appeal to the Supreme Court of the United States from the decision and judgment of said circuit court in the sum of three thousand dollars:

Now, therefore, if the said Quock Ting shall personally appear before the said circuit court of the United States in and for the northern district of California, at the court-room thereof, at San Francisco, Cal., as he may from time to time be by said court required to appear and render himself amenable to any and all lawful orders and process of said court, and not depart the said court without leave first obtained, and abide by the final order of said court in said matter to be made and entered and answer all costs in the premises, then this recognizance shall be void; otherwise to remain in full effect and virtue.

QUOCK [Chinese Signature.] TING. [SEAL.]
JACK [Chinese Signature.] TIN. [SEAL.]
CHAN [Chinese Signature.] CHEUNG. [SEAL.]

Acknowledged before me the day and year first above written.

F. D. MONCKTON,
Commissioner U. S. Circuit Court,
Northern District of California.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

Jack Tin and Chan Cheung, being duly sworn, each for himself, deposes and says that he is a householder in said district, and is worth the sum of three thousand dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

JACK [Chinese Signature.] TIN.
CHAN [Chinese Signature.] CHEUNG.

Subscribed and sworn to before me this 22nd day of March, A. D. 1888.

F. D. MONCKTON,
Commissioner U. S. Circuit Court,
Northern District of California.

17 [Endorsed:] No. 6314. Circuit court of the United States, northern district of California. In the matter of Quock Ting on *habeas corpus*. Bond to appear pending appeal to Supreme Court U. S. Filed March 26, 1888. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

I hereby certify that I personally know the sureties on the within bond; that I believe the persons signing are the persons described in and who purport to sign the bond, and that I believe them to be amply worth the penalty thereof, exclusive of property exempt from execution, and over and above all just debts and liabilities.

San Francisco, California, March 22nd, 1888.

GASTON STRAUS,
Attorney for Appellant.

Approved.
CHARLES L. WELLER,
Asst. U. S. Att'y.

18 In the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California.

In the Matter of QUOCK TING on *Habeas Corpus*. No. 6314.

I, L. S. B. Sawyer, clerk of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, do hereby certify that the foregoing seventeen written and printed pages, numbered from 1 to 17, inclusive, are a full, true, and correct copy of the record and of all proceedings in the above and therein entitled matter, and that the same constitute the transcript on appeal to the Supreme Court of the United States.

Seal U. S. Circuit Court, Northern Dist. Cal.

In testimony whereof I have hereunto set my hand and the seal of said circuit court this 7th day of September, A. D. 1888.

L. S. B. SAWYER,
Clerk U. S. Circuit Court, Northern District of California.

19 UNITED STATES OF AMERICA, *ss:*

To the United States of America and to John T. Carey, Esq'r, United States attorney for the northern district of California, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 8th day of October, A. D. 1888, pursuant to an order allowing an appeal from the decision and judgment of the circuit court of the United States for the northern district of California to the Supreme Court of the United States in the matter entitled *in re* Quock Ting on *habeas corpus*,

No. 6314, to show cause, if any there be, why the judgment in the said order allowing an appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lorenzo Sawyer, judge of the circuit court of the United States, northern district of California, this 26th day of March, A. D. 1888, and of the Independence of the United States the one hundred and twelfth.

LORENZO SAWYER,
Circuit Judge.

20 [Endorsed:] No. 6314. In the Supreme Court of the United States. *In re* Quock Ting, *habeas corpus.* Citation. Due service of the within admitted this 26th day of March, 1888. Chas. S. Weller. Filed March 31, 1888. L. S. B. Sawyer, clerk U. S. circuit court, nor. dist. Cal.

Endorsed on cover: N. California, C. C. U. S. No. 638. Quock Ting, appellant, *vs.* The United States. Filed October 16, 1888.

Office Supreme Court U. S.
FILED,
APR 20 1891
JAMES H. McKENNEY

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

QUOCK TING, APPELLANT,
vs.
THE UNITED STATES.
No. 638.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE APPELLEE.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

QUOCK TING, APPELLANT,
vs.
THE UNITED STATES. } No. 638.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE APPELLEE.

STATEMENT.

This appeal is from the circuit court of the United States for the northern district of California, and is one of the representative cases presenting questions raised by appeal in sundry cases which appear upon the present docket and have been known as the "Chinese Exclusion Cases."

This case came before the court below upon the petition of one Quock Yan for a writ of habeas corpus, said peti-

tion charging that Quock Ting is unlawfully imprisoned, etc., by Captain Bryan, agent of the steamship *City of New York* in San Francisco, in said district. The alleged ground of the detention is charged to be—that it is claimed that said Quock Ting is a subject of the Emperor of China, and can not be allowed to land under the act of Congress of May 6, 1882, entitled "An act to execute certain treaty stipulations relating to Chinese" and the act amendatory thereof and supplemental thereto. Said petition also alleges that said Quock Ting was born in the United States, and that he is a citizen thereof.

The writ was issued returnable on or before March 9, 1888, and was duly served.

The agent of the steamship *City of New York* produced the said Quock Ting and made return that he held said Quock Ting in custody by direction of the customs authorities of the port of San Francisco under the provisions of the Chinese restriction act.

The matter was regularly brought on for hearing March 21, 1888, before said court, the United States attorney having appeared and intervened on behalf of the United States, and two witnesses, to wit, the said Quock Ting and his father, Quock Ah Chee, were examined (Rec., pp. 6, 7, 8). Upon said hearing the said Quock Ting was remanded and a judgment of remand duly made an dentered, adjudging that the said Quock Ting was not, at the date of the petition, illegally restrained of his liberty as therein alleged.

And it was by said judgment further adjudged and found that said Quock Ting came from China by the

steamship *City of New York*, and is a Chinese person forbidden by law to land within the United States, and has no right to be or remain therein.

Said Quock Ting was further by said judgment remanded to custody for deportation and for being transported back to China and to the port whence he came (pp. 4, 5).

He awaits, upon bail, the result of this appeal (p. 9).

POINTS.

A.

THE JUDGMENT OF REMAND IS JUSTIFIED BY THE EVIDENCE TAKEN UPON THE TRIAL.

The witness, Quock Ting, testifies as to his birth with surprising particularity. He says that he was born (p. 6) in San Francisco, Sun Chun Gee, on Dupont street, upstairs.

It is evident that he is not speaking from memory, but from instructions.

He speaks (fol. 12) of three Chinamen who went to China with himself and his mother, Yep Shee. Says he remembers the names of these three men because "my mother told me very often of those people and their names. She repeated them to me and I remember them." The court suggested a doubt by the inquiry, "Q. Six years ago?" and the witness responded: "My mother sometimes speaks those names to me very frequently." His mother is in China, and he knows nothing as to where the three Chinamen named are.

The witness claims that he is 16 years old, was born in San Francisco, and lived there until he was 10 years old, yet he can not count in English or speak a word of that language. He is examined through an interpreter:

Q. Can you count in English?
A. I do not understand English.
Q. Can you count in English?
A. I can count in Chinese but not in English.
Q. Do you know the names of the days of the week in English?
A. I am too small. I did not learn it.
Q. You do not know anything at all in English?
A. No, sir; not one word.

The appellant, as witness, states no incident or occurrence that he had known while in America, fails to mention the name of any person he had seen there, and describes no locality or landmark of the alleged city of his birth.

His sole testimony is that he knew the three Chinamen named, who in China lived in the next village to him, and that he was born on Dupont street, up stairs.

The father, Quock Ah Chee, testifies that the boy was born at "1030 Dupont street, up stairs."

The father fails to remember the three Chinamen that the boy names, but says that the boy went with "his mother and one of my friends, Chun Yun Chun."

He offers some testimony that is claimed to be corroborative, but which, if not manufactured, proves nothing as to the boy's place of birth, and this constitutes the evidence in the case.

No record of birth or other record is exhibited, and no witness, except the father, is produced who claims ever to have seen the appellant in the United States.

It is respectfully submitted that, under the cases, the judge was justified in remanding the petitioner, and that nothing appears in this case that requires this court to reverse the finding of the court below and declare Quock Ting a citizen of the United States.

The appellant came into port upon a ship coming from China. The rule is exclusion; the exception, admission. The burden of proof was upon him. He knows no one here but his father, and only his father knows him. The testimony, weighed according to the decisions of the courts, fails to prove that the appellant is of American birth, and fails to prove that he was ever in the United States previous to March, 1888.

B.

COURTS NOT REQUIRED TO ACCEPT AS TRUE SUCH TESTIMONY AS IS HERE PRESENTED.

This question of the credit to be given upon trials to uncontradicted testimony given by witnesses who are not impeached has been before the courts upon several occasions. The general conclusion may be drawn from these cases that neither juries nor judges are bound by testimony that they do not believe. They are not compelled to render verdicts or find as to fact in obedience to such testimony, although it is uncontradicted.

In *Elwood* v. *Telegraph Company* (45 N. Y., 553) the court say:

> The defendant contends, however, that the possibility of such an interference reduces the evidence of the sending of the message from Titusville to a mere presumption, which is entirely destroyed by the positive testimony of the defendant's agents, and that their evidence must be treated as uncontradicted and unimpeached. And numerous authorities are cited in support of the proposition that neither the court or jury is at liberty to disbelieve such evidence.
>
> It is undoubtedly the general rule that where unimpeached witnesses testify distinctly and positively to a fact and are uncontradicted their testimony should be credited and have the effect of overcoming a mere presumption (*Newton* v. *Pope*, 1 Cow., 110; *Lomer* v. *Meeker*, 25 N. Y., 361). But this rule is subject to many qualifications. There may be such a degree of improbability in the statements themselves as to deprive them of credit, however positively made. The witnesses, though unimpeached, may have such an interest in the question at issue as to affect their credibility. The general rules laid down in the books at a time when interest absolutely disqualified a witness, necessarily assumed that the witnesses were disinterested. That qualification must, in the present state of the law, be added. And furthermore, it is often a difficult question to decide when a witness is, in a legal sense, uncontradicted. He may be contradicted by circumstances as well as by statements of others contrary to his own. In such cases courts and juries are not bound to refrain from exercising their judment and to blindly adopt the statements of the witness, for the simple reason that no other witness has denied them, and that the character of the witness is not impeached.

In *Kavanagh* v. *Wilson* (70 N. Y., 177) the quality of evidence that may not be disregarded is defined.

The uncontradicted witness was a son of the plaintiff and was interested, possibly, in incidental earnings connected with the real-estate transaction under consideration. "The story the witness tells" (as may be well said of that of Quock Ting) "is not entirely free from some improbability."

The court says:

> The contract was testified to by a single witness, plaintiff's son, and there was no other evidence or circumstance in the case tending to prove it.
>
> * * * * *
>
> At the close of the evidence plaintiff's counsel asked the court to direct a verdict for the plaintiff, and defendant's counsel asked to have the question submitted to the jury whether or not Mr. Poillon ever promised or agreed to pay the plaintiff the sum of $4,000 for the services alleged in the complaint. The court declined to submit the question to the jury and directed a verdict for the plaintiff for the $4,000 and interest, and defendant's counsel excepted.
>
> We are of opinion that the court erred. It is undoubtedly a general rule that when a disinterested witness, who is in no way discredited, testifies to a fact within his own knowledge, which is not of itself improbable, or in conflict with other evidence, the witness is to be believed, and the fact is to be taken as legally established, so that it can not be disregarded by court or jury. (*Newton* v. *Pope*, 1 Cow., 109; *Conrad* v. *Williams*, 6 Hill, 444; *Lomer* v. *Meeker*, 25 N. Y., 361; *Elwood* v. *The Western Union Tel. Co.*, 45 N. Y., 549.)
>
> But this case is not fairly brought within this rule. Here the witness was not wholly disinterested. He

was a son of the plaintiff, engaged in his business, and thus biased and interested in feeling. His compensation for drawing the contracts (and how large that was to be does not appear) depended, I infer from the evidence, upon his father's success in getting his compensation as the broker.

The story the witness tells is not entirely free from some improbability. Why did Poillon promise to pay more than double the usual price for the sale of country property? Why was this compensation never spoken of before or after in the numerous conversations heard by the witness? What induced Poillon to make the promise of the large sum, when the usual commission would seem to have been ample compensation for any service to be rendered? Why did he make the unusual promise to pay the absolute sum in no way dependent upon the amount for which the property might be negotiated? The further fact exists that no one was living who could contradict the witness if he did not testify truly. All these facts and considerations made this a case proper for the jury, and the court erred in refusing to submit it to them.

In *Gildersleeve* v. *Landon* (73 N. Y., 609), the same doctrine is approved.

The question came before the court again in *Koehler* v. *Adler* (78 N. Y., 287). The opinion is by Church, Ch. J., and the court say:

It is a general rule that the positive testimony of an unimpeached, uncontradicted witness can not be disregarded by the court or jury arbitrarily or capriciously (*Lomer* v. *Meeker* 25 N. Y., 361), but in applying this rule great care should be exercised. In *Elwood* v. *The Western Union Telegraph Co.* (45 N. Y., 549), Rapallo, J., in delivering the opinion of this

court said: "But this rule is subject to many qualifications. There may be such a degree of improbability in the statements themselves as to deprive them of credit, however positively made. * * * And furthermore, it is often a difficult question to decide when a witness is in a legal sense uncontradicted. He may be contradicted by circumstances as well as by statements of others contrary to his own. In such cases courts and juries are not bound to refrain from exercising their judgment, and to blindly adopt the statements of a witness for the simple reason that no other witness has denied them, and that the character of the witness is not impeached." The general rule was held not to apply in *Kavanagh* v. *Wilson* (70 N. Y., 17), where it was inferred that the witness might be interested in the recovery, and it appeared that the statement was not entirely free from improbability.

In the *C. National Bank* v. *Diefendorf* (123 N. Y., 191), the rule that uncontradicted testimony may not be controlling was again considered and the court, by Ruger, Ch. J. (p. 200), say:

> No material question arises in this case as to which party had the burden of proof, as the plaintiff voluntarily assumed that burden in the outset of the trial, and no contradictory proof as to the circumstances attending the transfer of the notes was given by the defendant. The burden of proof to establish this fact, as we shall hereafter see, rested upon the plaintiff, and upon all the evidence the question we think was for the jury to determine.
>
> The claim that the plaintiff's cashier was a disinterested witness, whose testimony must be regarded as controlling if not contradicted, can not be sustained. Aside from the alleged improbability of his state-

ments, he was the financial agent of the plaintiff and the owner of one-fifth of its capital stock, and aside from his direct interest, responsible to his principal for the care, fidelity, and prudence with which he discharged his official duties. His interest in the transaction was coextensive with that of the plaintiff, and brings him directly within the cases which hold that the credibility of such a witness is a question for the jury to determine. (*Elwood* v. *W. U. T. Co.*, 45 N. Y. 549; *Honegger* v. *Wettstein*, 94 *id.*, 252.)

In *Wait* v. *M'Neil* (7 Mass., 261) the court instructed the jury that if they believed the facts to be as stated by young M'Neil their verdict ought to be for defendant; otherwise for the plaintiff. They found for the plaintiff, and the defendant moved for a new trial, as upon a verdict against evidence.

The court refers to such circumstances as corroborate the witness, and continues:

> On the other hand, there were circumstances before the jury, and proper for their consideration, whether full credit ought to be given to the witness. *He was the son of the defendant.* The nature of the transaction itself afforded some ground for hesitation. It is certainly not common that partnerships exist without the terms being reduced to writing; and it certainly could hardly be expected, although there was a partnership without any writing, yet that it should be known only to one witness, and that witness the son of one of the parties. There was also another fact of no inconsiderable weight before the jury; the supposed partnership property was sold at auction by the sole order of the defendant, without the knowledge of the plaintiff, and without notice to him.

> As the burden of proof respecting the partnership was on the defendant, if the jury did not pay full credit to young M'Neil's testimony, they did right in the verdict which they returned.

In *Harding* v. *Brooks* (5 Pickering, 244) the rule is approved and the court say:

> The general rule is, that when a fact is sworn to by a witness of fair fame, and who is uncontradicted by other testimony, or any circumstances in which he may stand, the jury are not at liberty to disregard his testimony. The rule, and an exception to it, are laid down in the case of *Wait* v. *M'Neil* (7 Mass. Rep., 261). We think a qualification of the rule may grow out of the nature or subject-matter of the testimony.

In *United States* v. *Borger* (7 Fed. Rep., 198) the question of the duty of the jury as to believing uncontradicted testimony came under consideration in the circuit court, southern district New York. The court states the law as follows:

> It is contended that the jury were bound to believe the testimony of the defendant, it being uncontradicted.
>
> In *The Helen R. Cooper* (7 Blatchf., 378) it was said by Judge Woodruff that where a witness, otherwise unimpeached, is testifying under circumstances calculated to create a strong bias, and he states what is, in its nature, incredible, his testimony is not necessarily to be believed. The credit of testimony is left to the jury, who are judges of the probability or improbability, credibility or incredibility, of the witness and his testimony. The credit due to testimony is to be measured, in part, by the interest or bias of the witness, which may sway him to pervert the

> truth, and by his manner and deportment in delivering his testimony; and a jury, in weighing testimony, have a right to consider the consistency of the different parts of a narration, and the possibility and probability, or impossibility or improbability, of the matters related. (Best on Evidence, 16, 18, 217.)

In *Tracey* v. *Town of Phelps* (22 Fed. Rep., 634), northern district New York, the question was whether plaintiff was a holder of certain bonds in good faith and for value. He obtained his title from Post, who testified. The court says:

> The bona fides of his acquisition of the bonds was left to rest on his unsupported testimony.
>
> Upon this case the court refused to rule, as matter of law, that Post was a bona fide purchaser of the bonds, and left the question as one of fact to the jury. This was not error, because the jury were at liberty utterly to reject his testimony as incredible, although he was not impeached or contradicted by direct evidence. It was enough to authorize the jury to do this that there was some intrinsic improbability in Post's narrative, and he had shown himself unworthy of credit by his attempt to falsify the transaction respecting the sale of the bonds made by him to the plaintiff.

In the case of *The Santissima Trinidad and The St. Ander* (7 Wheat., 283) the question came under consideration in this court, and its views were expressed by Mr. Justice Story (p. 338) as follows:

> If the cause stood solely upon the testimony of the witnesses who have been examined on behalf of the libellants, we should have great hesitation in admitting the conclusions which have been drawn from it.

> The witnesses, indeed, speak directly and uniformly either to the point of illegal equipment or illegal augmentation of force within our ports. But their testimony is much shaken by the manifest contradictions which it involves, and by declarations of facts the falsity of which was entirely within their knowledge, and has been completely established in proof. It has been said that if witnesses concur in proof of a material fact, they ought to be believed in respect to that fact, whatever may be the other contradictions in their testimony. That position may be true under circumstances; but it is a doctrine which can be received only under many qualifications, and with great caution. If the circumstances respecting which the testimony is discordant be immaterial, and of such a nature that mistakes may easily exist and be accounted for in a manner consistent with the utmost good faith and probability, there is much reason for indulging the belief that the discrepancies arise from the infirmity of the human mind, rather than from deliberate error. But where the party speaks to a fact in respect to which he can not be presumed liable to mistake, as in relation to the country of his birth, or his being in a vessel on a particular voyage, or living in a particular place, if the fact turn out otherwise, it is extremely difficult to exempt him from the charge of deliberate falsehood; and courts of justice, under such circumstances are bound, upon principles of law and morality and justice, to apply the maxim *falsus in uno falsus in omnibus.*

Information from legislative and other official sources has impressed upon the attention of this court the suspicious and unreliable nature of the testimony offered in many instances in support of alleged residence under the Chinese exclusion acts, and the kind of evidence that we

are now contending against is recognized and designated by this court in *The Chinese Exclusion Case* (130 U. S. R., 598, 599) as follows:

> The enforcement of this act with respect to laborers who were in the United States on November 17, 1880, was attended with great embarrassment, from the suspicious nature, in many instances, of the testimony offered to establish the residence of the parties, arising from the loose notions entertained by the witnesses of the obligation of an oath. This fact led to a desire for further legislation restricting the evidence receivable, and the amendatory act of July 5, 1884, was accordingly passed (23 Stat., 115, c. 220). The committee of the House of Representatives on Foreign Affairs, to whom the original bill was referred, in reporting it back, recommending its passage, stated that there had been such manifold evasions, as well as attempted evasions, of the act of 1882, that it had failed to meet the demands which called it into existence (Report in H. R. No. 614, 48th Cong., 1st sess.). To obviate the difficulties attending its enforcement, the amendatory act of 1884 declared that the certificate which the laborer must obtain "shall be the only evidence permissible to establish his right of reëntry" into the United States.
>
> This act was held by this court not to require the certificate from laborers who were in the United States on the 17th of November, 1880, who had departed out of the country before May 6, 1882, and remained out until after July 5, 1884 (*Chew Heong* v. *United States*, 112 U. S., 536). The same difficulties and embarrassments continued with respect to the proof of their former residence. Parties were able to pass successfully the required examination as to their residence before November 17, 1880, who, it was generally believed, had never visited our shores.

That Chinese immigrants continue to seek unlawful entry into the United States, a paragraph of the appropriation act of March 3, 1891, providing for sundry civil expenses, bears witness as follows:

> Enforcement of the Chinese Exclusion Act: To prevent unlawful entry of Chinese into the United States, by the appointment of suitable officers to enforce the laws in relation thereto, and for expenses of returning to China all Chinese persons found to be unlawfully in the United States, sixty thousand dollars.

C.

THE REMANDING ORDER SHOULD BE SUSTAINED.

It is established law that the United States possesses, in common with all independent nations, the right to exclude from all territory within the national boundaries such aliens and foreigners as the lawmaking power sees fit, by proper enactment, to exclude.

The people have declared by proper legislative enactments that Chinese laborers shall be excluded from this territory.

Treaty November 17, 1880 (22 Stat., 826);

Act of May 6, 1882 (22 Stat., 58);

Act of July 5, 1884 (23 Stat., 115);

Acts, read together, 112 U. S., 543, and 124 U. S., 627;

Act of October 1, 1888 (25 Stat., 504);

Head Money Cases (112 U. S., 580);

Chew Heong v. *United States* (*id.*, 536);